

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1621 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----  
MAHENDRA ASHABHAI PATEL

Versus

UNION OF INDIA

-----  
Appearance:

MR JT TRIVEDI, MR HIMANSHU TRIVEDI & DEVYANI M.DAVE  
for petitioner.

MR JD AJMERA for Respondent No. 1

MR.A.J.DESAI, A.G.P. for Respondent No. 2

-----  
CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 03/02/97

ORAL JUDGEMENT

Rule.

Mahendra Ashabhai Patel has filed the present petition against the respondents as regards rejection of his application for getting pension under the Freedom Fighters' Pension Scheme, 1972.

2. A notice was issued to the respondents. Respondent No.1 has appeared and has filed affidavit in reply and produced documentary evidence in respect of his contentions. I have heard both the parties at length on merits. Therefore, I proceed to dispose of this petition finally by issuing rule today.

3. Under the said Freedom Fighters' Scheme 1972, the claimant is to produce the documents from the Court or Jail authorities to show that he had either undergone imprisonment for 6 months or that there was order of either arrest or detention and he had avoided his arrest for not less than six months by remaining underground. In case if the Public documents that is the document from the Court or the Jail authorities are not available then the claimant has to annex to his application the affidavits and the certificates issued by the Freedom Fighters who have undergone imprisonment of more than two years. The present petitioner had applied for getting the pension under the Freedom Fighters' Pension Scheme by making an application on 10-2-90. Along with the application the petitioner had forwarded to the respondent a letter issued by the District Superintendent of Police dated 29-5-89 wherein it has been mentioned that the original record was not available with the office and he had also annexed the certificates of freedom fighters who had undergone imprisonment for more than 2 years to show that the present petitioner was avoiding arrest for more than 6 months. But the application of the present petitioner has been rejected by the respondent No.1 on the ground that the petitioner has preferred his application after 31st March, 1982 and as it was not supported by any official documents i.e. documentary evidence like the judgment or warrant of arrest his application was not tenable in law, and, therefore, the same was rejected. According to the petitioner the said action of the respondent No.1 is contrary to the spirit of the said scheme and the scheme nowhere prescribed that the application for getting the freedom fighter pension was to be made within stipulated period. His claim was supported by the State Government, and, therefore, the respondent No.1- Union of India was not justified in rejecting his claim.

4. The respondent No.1 has contested the claim of the petitioner by filing affidavit in reply. It is contended by the respondent No.1 that as the petitioner has filed his application after 31st March, 1982, his application ought to have supported by the documentary evidence from official record and that no secondary

evidence in the form of certificate is acceptable. As the petitioner has failed to produce the official record and as his application was after 31st March, 1982, the same has been rejected according to the said scheme. Thus, the order of rejection is quite proper and the same could not be interfered by exercising the jurisdiction under Article 226 of the Constitution of India.

5. When the scheme was introduced initially in the year 1972, it was mentioned that such claim for pension should be made on or before 31st March, 1982. The said scheme was further liberalized and the same was made effective from 1st August, 1980. Thereafter, a circular has been issued by the Ministry of Home Affairs and by the said circular, the period for accepting the application was extended up to 30th June, 1985. Therefore, in view of the said circular which is issued by the Ministry of Home Affairs, prima facie it seems that the government had fixed the last date for accepting the application as 30th June, 1985. But the Apex Court has considered the said Freedom Fighter Pension Scheme, 1972, in the case of MUKUNDLAL BHANDARI & ORS. V UNION OF INDIA AND OTHERS, A.I.R. 1993, SC, 2127 and has held that the failure of the applicant to make application before the prescribed date was immaterial and there could not be any limitation for considering claim of a Freedom Fighter under the Freedom Fighters' Pension Scheme by laying down the following principles :

Refusal on part of Govt. to grant pension to freedom fighters on the ground that the applications were filed after expiry of prescribed date is not justified. Neither the date of the application nor the date on which the required proof is furnished should make any difference to the entitlement of the benefit under the Scheme. Hence, once the application is made, even if it is unaccompanied by the requisite eligibility date, the date on which it is made should be accepted as the date of the preferment of the claim whatever the date on which the proof of eligibility is furnished.

It is common knowledge that those who participated in the freedom struggle either at the national level or in the erstwhile Nizam State, are scattered all over the country and most of them may even be inhabiting the remotest parts of the rural areas. What is more, almost all of them must have now grown pretty old, if they are alive. Where the freedom fighters are

not alive and their widows and the unmarried daughters have to prefer claims, the position may still be worse with regard to their knowledge of the prescribed date. What is more, if the Scheme has been introduced with the genuine desire to assist and honour those who had given the best part of their life for the country, it illbehoves the Government to raise pleas of limitation against such claims. In fact, the Government, if it is possible for them to do so, should find out the freedom fighters or their dependents and approach them with the pension instead of requiring them to make applications for the same. That would be the true spirit of working out such Schemes. Hence, whatever the date on which the claimants make the applications, the benefit should be made available to them. The date prescribed in any part or future notice inviting the claims should be regarded more as a matter of administrative convenience than as a rigid time-limit.

Therefore, in view of the above interpretation made by the Apex Court, the Government cannot reject the claim of the Freedom Fighter merely because his application for claiming the pension was not preferred within the stipulated date.

6. As the petitioner had not received any reply to his claim he had written letters on 22-9-94 and 6-9-95. The reply given by the respondent No.1 to the petitioner on his application on 10th June, 1994 and 6th December, 1995 are running as under :

Reply dated 10th February, 1995 is running as under:

Grant of Freedom Fighters pension from  
Central Revenues.

"I am directed to refer to your letter  
dtd. 22-9-94 on the subject mentioned above & to say that your case for grant of pension can not be accepted as no documentary evidence from official records has been furnished by you in support of underground claim. As per the provision of the scheme, claims received after 31-3-82 can be considered for Central Pension only if the same accompanied by the documentary

evidence from official records ( i.e. Court/Jail) and no secondary evidence in the form of Personal Knowledge Certificate is accepted. Your case is, therefore, not covered under the S.S.S. Pension Scheme."

Reply dated 6th December, 1995 is running as under :

"I am directed to refer to your letter dated 6-9-95 on the subject mentioned above & to say that the case of Sh. Mahendrabhai A. Patel has been examined in detail, but it is not found possible to consider his case for grant of pension as he has not produced any documentary evidence from official records in support of his claim of underground suffering.

The S.S.S.Pension Scheme provides that in case on applicant claims underground suffering of six months or more and his application is received after 31-3-82, he/she should produce certified copies of the judgment from the court which should clearly indicate that he/she had to remain underground against an executive action of the then Govt. Sh. M.A.Patel has not produced any such evidence & therefore his case is not covered under S.S.S. Pension Scheme."

If the above replies given by the Union of India is considered, then it would be quite clear that the main contention of the respondent-Union of India is that the claim is made beyond the prescribed time. But as has been interpreted by the Apex Court regarding the prescribed period of limitation, government cannot reject the application by taking plea of limitation. The notification by which the evidence by way of the certificates and affidavits of veteren freedom fighters is made acceptable does not mention that such certificates will be acceptable only in case if the applications made till 31-3-82/31-3-85.

7. The petitioner has produced along with the petition the certificate issued by the District Superintendent of of Police which clearly shows that the original record is lost. It is the claim of the petitioner that there was only arrest warrant against him and there was no trial of the petitioner and there was no judgment against the petitioner. When there is no trial

against the petitioner there is no question of petitioner producing any documents of any court to show that his claim was true and correct one. When the police department of the government says that they have lost the record to expect and insist on the production of the record from the government is an expectation of impossibility. It is very pertinent to note that in both the replies it is not the claim of the Union Government that the certificates which were annexed by the applicant to his application are bogus or that they are not acceptable to the government for the reasons stated in the reply. The Union Government is only insisting two grounds for rejecting the claim of the petitioner. One is that his application is beyond period of limitation and second that the documents produced by him are not from the government record. As discussed earlier, the defence raised of limitation is not tenable in view of the decision of Apex Court in the case of MUKUNDLAL BHANDARI & ORS. V. UNION OF INDIA AND OTHERS, A.I.R. 1993, SC, 2127. When the production of government document is not possible in view of the destruction of the government record, his claim cannot be rejected for non-production of the government record. At the cost of repetition, it must be stated that it is not the claim of the government that the certificates which were annexed by the petitioner were not of the persons who are notified to be eligible for issuing such certificates. It is not the claim of the Union Government that those certificates are bogus and therefore those are not acceptable to the Union Government. The learned advocate for the respondent has put reliance on the observations of the Supreme Court in the same case of MUKUNDLAL BHANDARI & ORS. V. UNION OF INDIA AND OTHERS, A.I.R. 1993, SC, 2127 as regards sufficiency of proof. But in the instant case, it is not the claim of the Union Government that the certificates produced by the petitioner are not acceptable to the government as they are insufficient or they are not valid for some reasons. But they are not acceptable only on two grounds, that the claim is beyond limitation and that they are not certificates from the government offices. Therefore, it could not be said that the government had rejected the claim of the petitioner on finding that the certificates produced by him were not valid and proper. If there was such a finding recorded by the Union of India, then it is not possible for this court to interfere with the finding of the Union of India by exercising discretionary powers under Article 226 of the Constitution of India. But the certificates are rejected only because they are not from the government office. The scheme itself prescribes that when the certificates from the government office are not

available, the certificates from the veteren Freedom Fighters who have undergone imprisonment for more than 2 years are to be annexed and they are to be accepted by the Union Government. Therefore, in the circumstances I hold that the present petition will have to be allowed and the petitioner will be entitled to get the pension under the said Freedom Fighter Pension Scheme from the date of his application.

8. The learned advocate for the respondent No.1 Mr. Ajmera urged before me that this court cannot straightway allow this petition and should issue directions to the respondent No.1-Union of India to consider the documents produced by the petitioner and then to pass the appropriate order. He submitted before me that as it was the consistent policy of the Union Government that if the applications were filed after 31st March, 1983, then they are time barred and accordingly the petitioner's application was also rejected. At the outset it must be stated that the decision of MUKUNDLAL BHANDARI & OTHERS V. UNION OF INDIA AND OTHERS, A.I.R. 1993, SC, 2127 has been delivered by the Supreme Court on 14th May, 1993. The Union of India is a party to the said decision. After the said decision which has been quoted by me above it can not lie in the mouth of the Union Government to say that inspite of the decision of the Apex Court, they continued their policy of holding that the claims were time barred. When their policy has been condemned and quashed by the Apex Court in a proceeding to which the Union of India was a party, it will amount to contempt of court to say that inspite of the said decision, the Union of India continued its policy.

9. When a representation is made by any person to the government or a public authority raising his claim on certain documents which he annexes to his application, it is the duty of the Public Officer or the Central Government to consider all those documents and then to take its decision. Now in the instant case, the petitioner had annexed along with his application for getting a pension under the Freedom Fighter Pension Scheme all the documents which were sufficient to support his claim of pension. Therefore, it will have to presumed by the court that all those documents which were annexed by the petitioner along with his application were considered by the public authority i.e. the Union Government. If the Union Government does not record a finding that the documents produced by the applicant along with his application are not acceptable to the government for certain reasons, then it will have to be

presumed that there was no objection for accepting the said documents. When the petitioner preferred his claim by producing the documents on which he was relying and when his claim is rejected by giving the reasons, then it will have to be presumed that his claim was rejected for only those reasons mentioned in the order of rejection. In the reply dated 6th December, 1995 which is quoted above in para No.6 in the verbatim in para No.1 there is a clear admission that there was detail examination of the petitioner's claim by following orders.

" That the case of Sh. Mahendrabhai. A.

Patel has been examined in detail but it is not found to consider his case for grant of pension as he has not produced any documentary evidence from official records in support of his claim of underground suffering."

The above contents clearly shows that the documents produced by the petitioner were examined in details. But the Union Government has not stated that the certificate produced by the petitioner were not valid or genuine or that they were bogus. It is not also stated that they are not fulfilling the prescribed norms. Hence it will have to be held that no fault was found with the certificates produced by the petitioner.

10. Therefore, when the Union Government had informed the applicant that his application has been rejected on the ground that his application was beyond limitation and on the ground that he had not produced the official record i.e. record from jail and court and when the government does not inform that the certificates produced by him along with his application are not acceptable to the government, it will have to be assumed and presumed that those certificates were found to be valid though the government is not in a position to rely on the same on account of their claim that those certificates were not from the official record and that the claim was beyond limitation. In these circumstances it is not necessary to direct the the Central government to reconsider the case of thepetitioner. It is also necessary to mention here that the certificates annexed by the petitioner to his claim petition were scrutinized by the State Government and had found them to be correct and proper, and, therefore, the State Government had supported his claim. Therefore, in the circumstances, it would be unjust and improper to again ask the Central Government to consider the claim of the petitioner. Therefore, in view of the above reasons I am unable to accept the arguments of Mr. Ajmera, the learned advocate



for the respondent-Union of India that I should remit the matter to the Central Government to reconsider the documents produced by the petitioner along with his application.

11. Thus, I hold that the petitioner is entitled to get the Freedom Fighters' Pension. I, hereby direct the Central Government to pass the necessary order for granting a Freedom Fighters' Pension and all arrears from 10-2-1990 to the petitioner within 6 months from today, but in the meantime, the respondent No.1-Union Government should pay to the petitioner Rs.1,000/= per month from February,1997. The amount of February,1997 is to be payable on or before 10th March, 1997 and the further amount is to be paid on or before 5th day of every month till the issuing of order regarding issue of pension and all the arrears from the date of application 10-2-92. This interim payment ordered by this court is to be adjusted in the arrears payable to the petitioner. Rule is made absolute. No order as to costs.

Writ be issued forthwith.

\* \* \* \*